SUPREME COURT, U. S.

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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1974
No. 74-5496

KELSEY D. BARTLETT,
Petitioner,

vs.

THE TOLEDO BAR ASSOCIATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

BRIEF OF RESPONDENT IN OPPOSITION

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Respondent The Toledo Bar Association opposes the petition filed herein for a writ of certiorari and prays that such petition be denied.

QUESTIONS PRESENTED

Petitioner urges this Court to issue its writ of certiorari by means of eleven questions which petitioner apparently believes will bring this matter properly before the Court under the provisions of the Rules relating thereto, particularly Rules 19 and 23; however, petitioner does not state with particularity anywhere in his petition how the decision of the Supreme Court of Ohio is erroneous in a manner which would authorize review thereof by the Court.

Nevertheless, it is clear that petitioner claims an absence of due process of law. This claim and certain factual statements made by petitioner will be discussed within. The facts must be discussed briefly in order to bring to the attention of this Court a few significant issues not all of which have been presented fully and accurately by petitioner.

STATEMENT OF THE CASE

Petitioner clearly claims that his constitutional right of due process of law was denied him because of a bias against him that he says infects the Supreme Court of Ohio and its Board of Commissioners on Grievances and Discipline, the Ohio bar associations and the Toledo Bar Association in particular, the large law firms, and the particular lawyers representing respondent (see Petition, pp. 9, 10, 12 and 19 through 24). This is the crux of the case and all other questions are secondary to this claim of petitioner.

Since petitioner has placed in issue whether due process of law was accorded under the disciplinary procedure prescribed by the Supreme Court of Ohio, a brief outline of the pertinent provisions of Rule XVIII of the Supreme Court of Ohio is warranted.

Disciplinary action is commenced by the filing of a written complaint with the Secretary of the Board of Commissioners on Grievances and Discipline, signed by a member in good standing of the Bar of Ohio and certified by the President, Secretary or Grievance Committee Chairman of a regularly organized bar association within Ohio (the Relator), the certificate being a representation that Relator believes reasonable cause exists to warrant a hearing on such complaint. The procedure then provides for

notice to the attorney of the nature of the charge made against him, a formal hearing before a hearing panel of three members of the Board of Commissioners, the right to counsel, the observance of all rules of evidence at such hearing, the preparation of a transcript of such hearing, the review of the entire proceedings by the full Board of Commissioners, the right to file written objections with the Supreme Court of Ohio to the report certified to it by the board, and a hearing before the court on any such objections. The respective responsibilities of the board and of the court in disciplinary proceedings were made clear by the Supreme Court of Ohio in *Mahoning County Bar Association v. Ruffalo,* 176 Ohio St. 263 at 263-264, 199 N.E.2d 396, at 398 (1964), when it said:

> "In cases of this kind, the board of commissioners acts for and on behalf of this court. In doing so, it makes recommendations as to the facts which should be found and the action which should be taken by this Court. However, this Court has full responsibility for determining what the facts are and what action should be taken on those facts."

Further, Article XIV of the Constitution of respondent requires the observance of certain procedures before a complaint shall be filed in the manner described in the preceding paragraph. It is required that there be an investigation by respondent's Grievance Committee, followed by a formal hearing upon reasonable notice. The lawyer complained against may be represented by counsel; and, if the action taken is unfavorable to said lawyer, he has the right of appeal to the Executive Committee of respondent, with the opportunity for full review of the Grievance Committee proceedings by the Executive Committee prior to any possible filing with the Board of Commissioners.

Petitioner asks whether he can be disbarred without proof beyond a reasonable doubt that he is guilty of misconduct. In this connection, the Supreme Court of Ohio found that the findings of fact relevant to this case were supported by the overwhelming weight of the evidence and were conclusively proven by the record [Petitioner's Appendix 3 cited as *Toledo Bar Association v. Bartlett*, 39 Ohio St. 2d 100, 313 N.E.2d 834, at 836 to 838 (1974)].

Petitioner attempts to discredit the Supreme Court of Ohio by saying that it did not review the record because, among other reasons, he had in his possession a small part of the record which the Court did not see (Petition, p. 20). Petitioner does not explain why he did not place this portion of the record in the hands of the Court since he certainly knew the Court was engaged in reviewing the record for purposes of decision. Contrary to his position, the abovementioned opinion of the Supreme Court of Ohio states in the first paragraph of the opinion proper: "This Court has reviewed and considered the entire record, the objections of respondent and the briefs very carefully. The objections to the findings are overruled."

A large portion of petitioner's brief is devoted to an attempt to demonstrate to this Court that a factual issue, the existence of the "note" and its bearing on the duties of petitioner, was decided by the Supreme Court of Ohio in such a way as to deny due process of law to petitioner. Significantly, petitioner is so caught up in his own rationale that he offers the statement that, while he was guardian, the maker of the note (Brayton) agreed to pay the note to petitioner to cover his fee, even though the note was part of the guardianship estate of which petitioner was guardian. And he further states that after the death of the ward (when his authority had ceased), he cancelled

the original note and received from Brayton a cognovit note in favor of petitioner (Petition, p. 5). The interpretation placed on this conduct by the Board of Commissioners is shown at petitioner's Appendix 4, p. 15. The Probate Court of Lucas County, Ohio, in separate civil litigation, ordered the note restored to the guardianship estate, as is conceded by petitioner (Petition, pp. 6 and 11).

REASONS FOR NOT GRANTING THE WRIT

Petitioner's brief contains many references to his contentions and suppositions with respect to his belief that he is being attacked by "one of the most corrupt and deeply entrenched 'beaureaucracies' in the land. . . ." (Petition, p. 24). However, the proceedings as they actually were conducted do not support this conclusion.

In truth, this matter was initiated by petitioner's adversary in the guardianship litigation, as petitioner concedes (Petition, p. 13). Thereafter, an investigation was made by respondent's Grievance Committee. A formal hearing was held by it. Petitioner participated actively in this proceeding, electing to act as his own counsel. After a decision adverse to him, petitioner appealed to respondent's Executive Committee, where there was another formal hearing in which petitioner actively participated.

Following this hearing, formal charges were made against petitioner pursuant to Rule XVIII of the Supreme Court of Ohio. While the charges were pending, petitioner took the deposition of his client, Richard Brayton, in Los Angeles, California. Respondent participated in this deposition. At the hearing before the panel of the Board of Commissioners on Grievances and Discipline, he was represented by able counsel appointed by the panel

throughout five days of testimony. Petitioner offered a substantial mass of exhibits, some of which are duplicated in his attachments to his petition herein. The entire proceedings were transcribed and later the matter was fully argued before the hearing panel by petitioner through written briefs. After the Board of Commissioners certified its report to the Supreme Court of Ohio and made its recommendations with respect thereto, petitioner submitted his written objections and supporting brief to the Supreme Court of Ohio in accordance with its rule; and, after oral hearing before that court, a judgment was ultimately entered therein. Thereafter petitioner filed a motion for rehearing, which was submitted to the court on written briefs and subsequently overruled.

It is obvious from the foregoing review of the procedures undertaken by petitioner that he exploited to the fullest his opportunity to present his defense in this matter, and that he had full opportunity to do so.

Petitioner's contention as to the necessary quantum of proof is clearly not relevant in view of the finding of the Supreme Court of Ohio that the facts on which the decision was premised were proved conclusively. "Conclusive evidence" has been defined as "that which is incontrovertible, either because the law does not permit it to be contradicted, or because it is so strong and convincing as to overbear all proof to the contrary and establish the proposition in question beyond any reasonable doubt." BLACK'S LAW DICTIONARY, 362 (Rev. 4th ed., 1968).

Petitioner's contentions with respect to the "note", if relevant in a petition for a writ of certiorari, are clearly vitiated by his own statements in his brief herein, coupled with the findings of the Board of Commissioners on Grievances and Discipline and the Supreme Court of Ohio previously mentioned.

Petitioner would have the Court weigh evidence on several other issues. However, the leading case of *Selling v. Radford,* 243 U.S. 46 (1917), although dealing with disciplinary proceedings in the federal court system, has long been recognized as laying down the rule defining the limits of a review by this Court of decisions of state courts in disbarment proceedings. At pages 50-51 of its opinion in the *Selling* case, this Court said:

> "* * * That is to say, we are of opinion that we should recognize the condition created by the judgment of the state court unless, from an intrinsic consideration of the state record, one or all of the following conditions should appear: 1. That the state procedure from want of notice or opportunity to be heard was wanting in due process; 2. That there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on our part that we could not consistently with our duty accept as final conclusion on that subject; or 3. that some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do."

None of these conditions exist in the instant case, unless the Court should find that, as charged by petitioner, all the instrumentalities involved in the discipline of lawyers in Ohio, as applied to petitioner, are now and have been for years harboring a deliberate and malicious intention to disbar petitioner. This is a scurrilous charge made again and again in argument by petitioner but totally

unsupported by facts. There is no proof whatsoever in this extensive record that such is the case. Indeed, the charge is false.

CONCLUSION

Respondent is convinced that petitioner has failed to show any grounds to support the granting of a writ of certiorari and requests that his application be denied.

Respectfully submitted,

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and

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